

(d)(1) The appropriate Secretary may, on request of an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), grant such employee compensatory time off from duty instead of overtime pay for overtime work.

(2) For purposes of this subsection, the term “appropriate Secretary” means—

- (A) with respect to an employee of a nonappropriated fund instrumentality of the Department of Defense, the Secretary of Defense; and
- (B) with respect to an employee of a nonappropriated fund instrumentality of the Coast Guard, the Secretary of the Executive department in which it is operating.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 486; Pub. L. 90-83, §1(25), Sept. 11, 1967, 81 Stat. 200; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(E)], title II, §210(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1460; Pub. L. 104-201, div. A, title XVI, §1610(a), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 109-163, div. A, title VI, §674, Jan. 6, 2006, 119 Stat. 3319.)

HISTORICAL AND REVISION NOTES  
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 912.	June 30, 1945, ch. 212, §202, 59 Stat. 297. May 24, 1946, ch. 270, §9, 60 Stat. 218. Sept. 1, 1954, ch. 1208, §204, 68 Stat. 1109.

In subsection (a), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this subchapter applies” because of the definition of “agency” and the application stated in section 5541.

In subsection (a)(1), the word “officer” is omitted as included in “employee”.

In subsection (a)(2), the words “at his own discretion” are omitted as unnecessary in view of the permissive nature of the authority. The word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the “Classification Act of 1949, as amended” is omitted as unnecessary.

In subsection (b), the words “in his discretion” are omitted as unnecessary in view of the permissive nature of the authority. The words “overtime work” are substituted for “any work in excess of forty hours in any regularly scheduled administrative workweek” because of the definition of “overtime work” in section 5542(a).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5543(a)(2) ...	5 App.: 912.	July 18, 1966, Pub. L. 89-504, §404(b), 80 Stat. 297.

REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsecs. (a)(1) and (b), is classified to section 207 of Title 29, Labor.

GS-10, referred to in subsec. (a)(2), is contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

- 2006—Subsec. (d). Pub. L. 109-163 added subsec. (d).
- 1996—Subsecs. (b), (c). Pub. L. 104-201 added subsec. (b) and redesignated former subsec. (b) as (c).
- 1990—Subsec. (a)(1). Pub. L. 101-509, §529 [title II, §210(2)], inserted “under section 5542 or section 7 of the Fair Labor Standards Act of 1938” after “payment”.
- Subsec. (a)(2). Pub. L. 101-509, §529 [title I, §101(b)(3)(E)], inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)” after “GS-10”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

**§ 5544. Wage-board overtime and Sunday rates; computation**

(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. The overtime hourly rate of pay is computed as follows:

- (1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.
- (2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.
- (3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday. Time spent in a travel status away from the official duty station of an employee subject to this sub-

section is not hours of work unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively (including travel by the employee to such event and the return of the employee from such event to the employee's official duty station). The first and third sentences of this subsection shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to the first and third sentences of this subsection, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(b) An employee under the Office of the Architect of the Capitol who is paid on a daily or hourly basis and who is not subject to chapter 51 and subchapter III of chapter 53 of this title is entitled to overtime pay for overtime work in accordance with subsection (a) of this section. The overtime hourly rate of pay is computed in accordance with subsection (a)(1) of this section.

(c) The provisions of this section, including the last two sentences of subsection (a) and the provisions of section 5543(b), shall apply to a prevailing rate employee described in section 5342(a)(2)(B).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 486; Pub. L. 90-83, §1(26)(A), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, title II, §222(d), Dec. 16, 1967, 81 Stat. 641; Pub. L. 92-392, §5, Aug. 19, 1972, 86 Stat. 573; Pub. L. 101-509, title V, §529 [title II, §210(3)], Nov. 5, 1990, 104 Stat. 1427, 1460; Pub. L. 102-378, §2(42), Oct. 2, 1992, 106 Stat. 1352; Pub. L. 104-201, div. A, title XVI, §1610(b), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 105-277, div. G, subdiv. B, title XXIII, §2317(1), Oct. 21, 1998, 112 Stat. 2681-829; Pub. L. 110-181, div. A, title XI, §1110, Jan. 28, 2008, 122 Stat. 360.)

HISTORICAL AND REVISION NOTES  
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a) .....	5 U.S.C. 673c (2d proviso).	Mar. 28, 1934, ch. 102, §23 (proviso), 48 Stat. 522. Aug. 13, 1962, Pub. L. 87-581, §201 (2d proviso), 76 Stat. 360.
	5 U.S.C. 913.	June 30, 1945, ch. 212, §203, 59 Stat. 297. Sept. 1, 1954, ch. 1208, §205(a), 68 Stat. 1109.
(b) .....	5 U.S.C. 933 (as applicable to 5 U.S.C. 673c).	June 30, 1945, ch. 212, §503 (as applicable to §23 of the Act of Mar. 28, 1934, ch. 102, 48 Stat. 522, as amended), 59 Stat. 301.

In subsection (a), former sections 673c (2d proviso) and 913 are combined and restated for clarity and conciseness. The last 28 words of section 205(a) of the Act of Sept. 1, 1954, 68 Stat. 1109, are omitted as executed and covered by technical section 8.

Subsection (b) is restated to conform to subsection (a). In former section 933, the words "Classification Act

of 1949" were substituted for "Classification Act of 1923" on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5544(a) .....	5 App.: 673c (last proviso of 1st par.).	July 18, 1966, Pub. L. 89-504, §405(f), 80 Stat. 298.

The words "a part of which is on Sunday" are coextensive with and substituted for "any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday." The words "is entitled to additional pay" are coextensive with and substituted for "shall be paid extra compensation."

REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (a), is classified to section 207 of Title 29, Labor.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-181, in third sentence of concluding provisions, substituted "administratively (including travel by the employee to such event and the return of the employee from such event to the employee's official duty station)." for "administratively."

1998—Subsec. (a). Pub. L. 105-277, which directed the amendment of subsec. (a) by inserting after the fourth sentence "For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.", was executed by making the insertion after the first sentence of the concluding provisions, to reflect the probable intent of Congress.

1996—Subsec. (c). Pub. L. 104-201 inserted "and the provisions of section 5543(b)" after "the last two sentences of subsection (a)".

1992—Subsec. (a). Pub. L. 102-378, §2(42)(B), amended last two sentences generally. Prior to amendment, last two sentences read as follows: "This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work."

Subsec. (a)(2), (3). Pub. L. 102-378, §2(42)(A), substituted "2,087" for "2,080".

Subsec. (c). Pub. L. 102-378, §2(42)(C), added subsec. (c).

1990—Subsec. (a). Pub. L. 101-509 inserted at end "This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work."

1972—Subsec. (a). Pub. L. 92-392 substituted "pay" for "basic pay" and provided for determination of pay under section 5343 or 5349 of this title.

1967—Subsec. (a). Pub. L. 90-206 provided that time spent in a travel status away from the official duty station could not qualify as hours of work unless the trav-

el involved the performance of work while traveling, was incident to travel involving the performance of work while traveling, carried out under arduous conditions, or resulting from an event which could not be scheduled or controlled administratively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-206 effective thirty days after Dec. 16, 1967, see section 220(a)(4) of Pub. L. 90-206, set out as a note under section 5542 of this title.

CANAL ZONE EMPLOYEES

Section 17(3) of Pub. L. 85-550, July 25, 1958, 72 Stat. 411, provided that nothing in Pub. L. 85-550, which related to wage and employment practices of the Government of the United States in the Canal Zone, should affect the applicability of former sections 673c and 913 of this title [covered by this section] to those classes of employees, within the scope of former sections 673c and 913 of this title [covered by this section] on July 25, 1958.

**§ 5545. Night, standby, irregular, and hazardous duty differential**

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

- (1) periods of absence with pay during these hours due to holidays; and
- (2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

- (1) an employee in a position requiring him regularly to remain at, or within the confines

of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) (or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

- (1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof, except in such circumstances as the Office may by regulation prescribe; and